



A Judge Who Opens his Mouth

By
Zafarullah Khan

My beloved Greek philosopher, Plato (d: 348 BC) wrote in The Republic: 'Justice is Virtue and Virtue is Justice'. The statement mesmerised me till I read The Quran that declares: 'We have surely sent Apostles with clear signs, and the Book and the balance, so that the people may stand by justice' (57:25). In other words, all the divine religious tradition is to create a society that is based on principles of justice.

The Muslim scholars maintain that 'Adl' is to put a thing in its right place'. This comprehensive definition of 'Adl' covers all the facets of human life; the judicial justice is only one aspect while the conduct of a judge is the very foundation of the justice. In my career as a civil servant and a lawyer, I have unfortunately experienced some officers and judges, especially of the higher judiciary, there being no effective corrective mechanism, raising their voices and insulting young lawyers and litigants.

In this article I intend to discuss as what is required from a judge as far as raged behaviour is concerned.

1. Divine guidance

The divine or the divinely inspired guidance prescribes a rage-free rather a mild and mellow behaviour on the part of everybody and especially a judge:

- a) The holy Bible says: 'He who guards his mouth and his tongue, Guards his soul (Proverbs 21) and 'He that guardeth his mouth keepeth his soul; destruction shall be to him that openeth wide his lips (Proverbs 13).
- b) Allah sent Hazrat Moses to the Pharaoh with this advice: 'Yet speak gently to him, that haply he may be mindful, or perchance fear (The Quran 20:44). None is now better than Moses and worse than Pharaoh; rather an arrogant is follower of Pharaoh.

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- c) ‘O believers, be you securers of justice, witnesses for God. Let not detestation for a people move you not to be equitable; be equitable — that is nearer to god-fearing. And fear God; surely God is aware of the things you do (The Quran: 5:8).
- d) ‘God likes not the shouting of evil words (The Quran 4:148).
- e) The Prophet (PBUH) said: ‘Two people who insult each other will have the sin of what they say, but the sin will be entirely upon the one who initiated it as long as the wronged party does not transgress bounds’ (Sahîh Muslim -2587).
- f) The Holy Prophet (PBUH) has said that a judge shall not decide when he is in rage (Bukhari: Kital-ul-Ahkam, 1060).
- g) Umar bin Khattab, the second Khalifa, wrote a letter to his governor Abu Musa Ashaari saying: ‘do not be angry in the courtroom as this is the time that you have to be just (Adaab-ul-Qaazi, p 165).
- h) Nahjulballaga letter 53 details a letter of Hazrat Ali to Malik al-Ashtar, Governor of Egypt: ‘So, control your passions and check your heart from doing what is not lawful for you, because checking the heart means detaining it just half way between what it likes and dislikes.... If the authority in which you are placed produces pride or vanity in you then look at the greatness of the realm of Allah over you and His might the like of which might you do not even possess over yourself. This will curb your haughtiness, cure you of your high temper and bring back to you your wisdom, which had gone away from you.... For the settlement of disputes among people select him who is the most distinguished of your subjects in your view. The cases (coming before him) should not vex him, disputation should not enrage him.....He should be most ready to stop (to ponder) on doubtful points, most regardful of arguments, least disgusted at the quarrel of litigants, most patient at probing into matter’.

Umar bin Abdul-Aziz said that you shall not appoint a judge unless he is very patient otherwise he will deliver defective justice (Musaanif Abdulrazzaq, Vol 8, page 298).

2. Western Jurisprudence

- a) Francis Bacon (1561–1626), the English Lord Chancellor, says: ‘Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal’ (Essays- (LVI) ‘Of Judicature’)
- b) Christopher Palles (d.1921), Chief Baron of the Exchequer in Ireland, has placed a notice that would always be before his eyes. It read: ‘A judge should keep his mouth shut and his mind open: when he opens his mouth he shuts his mind’.
- c) The American judge, Justice Cardozo writes in his book ‘The Nature of the Judicial Process:’ ‘The judge, even when he is free, is still not wholly free. ...He is not a knight errant, roaming at will in the pursuit of his own ideal of beauty or goodness....He is not to yield to spasmodic sentiment, to vague and unregulated benevolence’.
- d) Justice Thomas, a judge of the Supreme Court of Queensland, Australia, in his book ‘Judicial Ethics’ explains the reasons as why the judges shall have a special and higher code of conduct: ‘We form a particular group in the community. We comprise a select part of a honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us.... They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations’.
- e) The Bangalore Principles of Judicial Conduct were endorsed at the 59th session of the United Nations Human Rights Commission in 2003. The principles are six ‘values’ to establish standards for ethical conduct of judges’. It prescribes: (i) Value 3: ‘Integrity is essential to the proper discharge of the judicial office. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done’; (ii) Value 4: ‘Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

- f) A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office'.
- g) International Criminal Court has formulated a Code of Judicial Ethics 2005. Its Article 5 says 'Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary. Its Article 8 says that in conducting judicial proceedings, judges shall maintain order, act in accordance with commonly accepted decorum, remain patient and courteous towards all participants and members of the public present and require them to act likewise'.
- h) UK Guide to Judicial Conduct, 2013 declares: 'A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general.

The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all'; 'A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities'.

3. Indian Experience

- (a) In Indian jurisdiction, in *KP Singh vs High Court of H.P.* and LPA No. 163 of 2009, it is held: 'Integrity according to Oxford dictionary is moral uprightness; honesty. It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short it depicts sterling character with firm adherence to a code of moral values. Judiciary is an integrity institution. Therefore, judicial officers should possess the sterling quality of integrity'.
- (b) The Supreme Court of India in *Tarak Singh vs. Jyoti Basu*, (2005) 1 SCC 201 held that 'Integrity is the hallmark of judicial discipline, apart from others.

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It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside’.

(c) In High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal, (1998) 2 SCC 72, Judges have been described as ‘hermits’, further reminding that, ‘they have to live and behave like hermits, who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat’.

4. Pakistani paradigm

- (a) Sections 265-G and 423 of the Code of Criminal Procedure, 1898, provides hearing the parties or their pleaders, if they appear, before a judgment is pronounced.
- (b) The Order XLI, Rule 30 of the Civil Procedure Code, 1908, requires that the Court, after hearing the parties and referring to any part of the proceedings, shall pronounce judgment. A hearing means a respectful and fair hearing of all the parties without a shouting match between a judge and a lawyer or hurling of harsh words at a party.
- (c) These statutory provisions in the Civil and Criminal Code have been subject of judicial scrutiny before our higher courts in numerous cases and almost invariably it has been categorically declared that a right of ‘hearing’ ensured in these provisions of laws necessitates a full opportunity being made available to a party to state his case. Therefore, any unnecessary usurpation of or interference with this discretion of a party at the hands of a judge is liable to prejudice the said party’s right of hearing and, ultimately, may render the judgment or the trial to be vitiated on account of his defect alone.
- (d) In *Imranullah v The Crown* (PLD 1954 F.C. 123), Justice Cornelius, while discussing the question of an appellant’s right of hearing, observed as follows: ‘The expression ‘hearing’ is employed in Section 423(1) of the Cr. P.C. to indicate compendiously both the right of address possessed by the appellant as well as the duty of listening to the address imposed upon the Court’.
- (e) Articles 178 and 194 of the Constitution 1973 obligate upon the judges of the superior courts to take an oath of office which says: ‘I will discharge my duties, and perform my

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functions, honestly to the best of my ability and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law:.... That I will abide by the code of conduct issued by the Supreme Judicial Council:.....That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will'. Let me clarify here that there is a chapter in the Constitution that spells out the fundamental rights of every citizen, including right to dignity that must be protected at all costs by the judges.

- (f) The Supreme Judicial Council under the Constitution has promulgated a code of conduct for judges of the superior courts (2009), the Preamble of which reads: 'The Constitution, by declaring that all authority exercisable by the people is a sacred trust from Almighty Allah, makes it plain that the justice of this nation is of Divine origin. It connotes full implementation of the high principles, which are woven into the Constitution, as well as the universal requirements of natural justice. The oath of a judge implies complete submission to the Constitution, and under the Constitution to the law'; 'To be a living embodiment of these powers, functions, and obligations calls for possession of the highest qualities of intellect and character'; 'Equally, it imposes patterns of behaviour, which are the hall-mark of distinction of a judge among his fellow-men'; Article II reads: 'A judge should be God-fearing, law-abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, blameless, and untouched by greed. While dispensing justice, he should be strong without being rough, polite without being weak, awe inspires in his warnings and faithful to his word, always preserving calmness, balance and complete detachment, for the formation of correct conclusions in all matters coming before him'; 'In the matter of taking his seat and of rising from his seat, he shall be punctilious in point of time, mindful of the courtesies, careful to preserve the dignity of the Court, while maintaining an equal aspect towards all litigants as well as lawyers appearing before him'.
- (g) Mr. Justice Asif Saeed Khan Khosa, the learned judge of our apex court, in his earlier academic article ('Judge Who Opens His Mouth...' PLD 1989 J 32), while discussing about the observations made by the judges or interruption made by them, writes: 'It goes without saying that such a disposal of cases leaves a very bitter taste both for lawyers and their

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clients – a thing not conducive to the interests of justice at all.The effect of this on the litigant is disastrous as he goes dissatisfied because although justice might in fact have been done yet for him it is not seen to have been done in his case..... This shakes the litigant's confidence in the Judiciary and the same then ultimately upsets the very fabric of the society. No wonder that Lord Chancellor Bacon had observed that 'an over-speaking Judge is no well-tuned cymbal'. A cymbal stands for music, which in turn represents harmony. Thus, an ill-tuned cymbal cannot create harmony, which is so essential for balance. Such a balance, says Bacon, can only be achieved by a judge through patience and gravity of hearing. Probably it was in this context that Palles C. B. had remarked that 'Judge who opens his mouth closes his mind' — a statement so strong and yet very often so true'.

It can rightly be concluded that a judge has opted to be a hermit of the divine temple of justice for whose illumination, Allah has sent all the prophets and all the Books.

The judges have to be silent or mellow as a recluse otherwise they will desecrate the divine temple for which they will be punished with public damnation in this world and banishment to the Fifth cycle of the Hell where they will be in the swampy, stinking waters of the river Styx wherein the actively wrathful fight each other viciously on the surface of the slime, while the sullen (the passively wrathful) lie beneath the water, withdrawn, into a black sulkiness which can find no joy in God or man or the universe, says Dante.

(Writer is a former SAPM/Minister for Law and Justice and a practicing Barrister and writer: mail@zafarullahkhan.com)